

**INDIANA JUDICIAL NOMINATING COMMISSION/
INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS**

FISCAL YEAR 2009-2010

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The Indiana Judicial Nominating Commission (“Nominating Commission”) and the Indiana Commission on Judicial Qualifications (“Qualifications Commission”) are established by Article 7, section 9, of the Indiana Constitution. The Chief Justice of Indiana, Randall T. Shepard, is the *ex officio* Chairman of both Commissions. The other six members, who serve three-year terms, are three lawyers elected by other lawyers in their districts and three non-lawyers appointed by the Governor. In addition to the Chief Justice, the elected and appointed Commission members as of June 30, 2010 were: John O. Feighner, Esq., of Fort Wayne; Mike Gavin of Warsaw; Christine Keck of Evansville; Fred McCashland of Indianapolis; James O. McDonald, Esq., of Terre Haute; and John C. Trimble, Esq., of Indianapolis. Mark Lubbers of Indianapolis and Stephen L. Williams, Esq., of Terre Haute also served during the fiscal year. The Nominating Commission and the Qualifications Commission met six times during the fiscal year.

Although comprised of the same members, the two Commissions perform distinct functions. The Nominating Commission appoints the Chief Justice of Indiana from among the five Supreme Court Justices. The Nominating Commission also solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. It selects three nominees for each vacancy, and the Governor appoints one of the nominees to fill the vacancy.

Justice Theodore R. Boehm announced in May that he would step down from the Indiana Supreme Court on September 30, 2010. The Nominating Commission publicized the vacancy and received 34 applications this fiscal year. The Commission completed its evaluation of the candidates in August 2010 and sent the names of Judge Steven David of Boone County, Judge Robyn Moberly of Marion County, and attorney Karl Mulvaney of Indianapolis to the Governor for his selection of Justice Boehm’s replacement.

The Nominating Commission also certifies former judges as Senior Judges to help qualifying courts with their caseloads. During this fiscal year, the Nominating Commission certified two new Senior Judges and recertified 99 Senior Judges.

The Qualifications Commission investigates allegations of ethical misconduct brought against Indiana judges, judicial officers, and candidates for judicial office. Periodically, the Commission privately cautions judges who have committed relatively minor or inadvertent violations of the Code of Judicial Conduct. In the most serious cases, the Qualifications Commission prosecutes formal disciplinary charges in public proceedings before the Supreme Court. Additionally, the Qualifications Commission and its staff provide judges and judicial candidates with advice about their ethical obligations, and Commission counsel responded to several hundred informal requests for advice during the fiscal year.

The Qualifications Commission considered 444 complaints alleging judicial misconduct this fiscal year. It dismissed 173 complaints summarily because they did not raise valid issues of judicial misconduct and instead were complaints about the outcomes of cases or otherwise were outside the Commission's jurisdiction. Another 230 were dismissed on the same grounds after Commission staff examined court documents or conducted informal interviews. The Qualifications Commission dismissed four other complaints because the matters involved former judicial officers or because the complaints alleged minor ethical violations, but reserved the right to re-open the matters if the Commission receives similar complaints against the judicial officers.

Of the remaining 37 cases on the Qualifications Commission's docket, the Commission requested the judges' responses to the allegations and conducted inquiries or investigations. Of those, seven complaints were dismissed after the Qualifications Commission concluded the judges had not violated the Code of Judicial Conduct. The Commission dismissed four additional complaints when the judges took remedial actions. The Qualifications Commission sent advisory letters or privately cautioned fifteen other judges for deviations from their ethical obligations. The Qualifications Commission's decision to caution a judge rather than proceed to formal, public charges depends upon the seriousness of the violation, the judge's acknowledgement of the violation, whether the conduct was intentional or inadvertent, whether the judge has a history of meritorious complaints, and other mitigating or aggravating circumstances.

In three cases, the Qualifications Commission agreed to close its investigations into alleged ethical misconduct on the condition that the judges immediately resign. One matter involved a claim that the judge abandoned the role of neutral arbiter in relation to his sentencing of a defendant in a high-profile murder case and attempted to interfere with the defendant's

exercise of her constitutional right to appeal her sentence. Another case involved an allegation that the judge abused his judicial power by issuing summonses in furtherance of a personal investigation. The third matter concerned claims that the judge routinely issued orders when the judge had no jurisdiction to do so.

The Qualifications Commission concluded another case against a judicial officer this fiscal year by issuing a public admonition in lieu of filing charges. The Commission found probable cause to file disciplinary charges against Commissioner Brian M. Pierce, Delaware Circuit Court, for referring to his judicial title and using profanity while speaking to various governmental officials to challenge a parking ticket he had received. Commissioner Pierce agreed to accept a public admonition in lieu of public charges; therefore, charges were not filed, and the Commission publicly admonished him. (Public Admonition of Commissioner Brian M. Pierce, Delaware Circuit Court, January 26, 2010.)

During the fiscal year, the Supreme Court resolved two public disciplinary cases filed by the Commission. In *In re Koethe*, 922 N.E.2d 613 (Ind. 2010), the Court suspended Judge Jennifer L. Koethe for 60 days without pay, after accepting a conditional agreement submitted by the Commission and the judge regarding conduct that occurred when Judge Koethe was the judge-elect to LaPorte Superior Court 2. The parties agreed that then judge-elect Koethe failed to uphold the integrity of the judiciary, to avoid impropriety, and to act in a manner promoting the public's confidence in the judiciary when she asked a police officer to destroy a personal note she had written, while there was an ongoing police investigation into an accidental shooting that had occurred at her residence. Prior to the resolution of the disciplinary case, Judge Koethe was acquitted of a criminal charge that had been filed regarding this conduct.

In *In re Moreland*, 924 N.E.2d 107 (Ind. 2010), the Court accepted a conditional agreement from the Commission and Judge David Andrew Moreland to dismiss the disciplinary charges in exchange for the city court judge's immediate resignation. On October 14, 2009, the Supreme Court granted the Qualifications Commission's interim request to suspend the non-attorney judge with pay, as is required by court rule, after criminal charges had been filed against the judge and his wife for exerting unauthorized control over payments for infraction tickets, payments to restore drivers' licenses, and other funds held in the city court's account. After completing its investigation, the Qualifications Commission filed formal disciplinary charges against the judge on December 13, 2009, alleging that Judge Moreland

committed willful misconduct in office by misappropriating court funds and engaged in nepotism by employing his wife as the city court clerk. Judge Moreland's resignation was effective March 26, 2010.

Five inquiries or investigations were pending at the conclusion of the fiscal year.

The Nominating Commission and Qualifications Commission are staffed by the Division of State Court Administration with a full-time attorney, a part-time staff attorney, and an administrative assistant. A more detailed report about the Commission and its members and activities may be found at www.IN.gov/judiciary/jud-qual.